

-13-

POU920000198US1

REMARKS

Claims 1-55 were originally presented in the subject application. Claims 1, 7, 19, 25, 38 and 44 have hereinabove been amended to more particularly point out and distinctly claim the subject invention. No claims have herein been added or canceled. Therefore, claims 1-55 remain in this case.

The addition of new matter has been scrupulously avoided. In that regard, support for the common amendment to claims 1, 19 and 38 can be found throughout the specification, for example, claim 12 as filed. Claims 7, 25 and 44 have been amended in independent form.

Applicants respectfully request reconsideration and withdrawal of the grounds of rejection and objection.

Objection to Disclosure

The Office Action objected to the disclosure, requiring updating of the status of the copending application cited in the application. In response, Applicants have amended the application as required.

Objection to Claims

The Office Action objected to claim 7, 25 and 44 under 37 C.F.R. §1.75. In particular, the Office Action suggested changing "a desired level" in each of the noted dependent claims to "the desired level" to refer back to the relevant independent claim.

In response, Applicants have amended claims 7, 25 and 44 as suggested in the Office Action. Thus, Applicants submit the objection should be withdrawn.

The Office Action also objected to claims 4, 7-17, 22, 25-35, 41 and 44-54 as depending from rejected base claims. However, the Office Action also indicated that these claims would be allowable if amended in independent form, including all of the limitations of the relevant base claims and any intervening claims.

-14-

POU920000198US1

In response, Applicants have so amended claims 7, 25 and 44. Claims 8-11, 26-29 and 45-48, respectively, already depend directly or ultimately from those claims. Thus, Applicants submit that claims 7-11, 25-29 and 44-48 are in condition for allowance.

35 U.S.C. §102 Rejection

The Office Action rejected claims 1, 2, 6, 19, 20, 24, 37-39 and 43 under 35 U.S.C. §102(e), as allegedly anticipated by Muller et al. (U.S. Patent No. 6,606,301). Applicants respectfully, but most strenuously, traverse this rejection as it applies to the amended claims.

With respect to the anticipation rejection, it is well settled that a claimed invention is not anticipated unless a single prior art reference discloses: (1) all the same elements of the claimed invention; (2) found in the same situation as the claimed invention; (3) united in the same way as the claimed invention; (4) in order to perform the identical function of the claimed invention. In this instance, Muller et al. fails to disclose at least one element of each of the independent claims and as a result does not anticipate, or even render obvious, applicants' invention.

Amended claim 1 recites, for example, removing one or more messages from the memory resident queue to storage in response to a determination that the memory resident queue is not being serviced at the desired level.

Against this aspect of claim 1, the Office Action cites to the abstract of Muller et al. at lines 7-8. However, the cited section of Muller et al. describes dropping packets. In contrast, the above-noted aspect of claim 1 recites removing one or more messages to storage. Thus, Muller et al. discloses discarding packets, while the present invention saves messages.

Therefore, Applicants submit that claim 1 cannot be anticipated by or made obvious over Muller et al.

-15-

POU920000198US1

Independent claims 19 and 38 also include aspects similar to that argued above with respect to claim 1. Thus, the arguments regarding claim are equally applicable thereto. Therefore, claims 19 and 38 also cannot be anticipated by or made obvious over Muller et al.

CONCLUSION

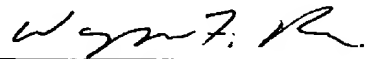
Applicants submit that the dependent claims not specifically addressed herein are allowable for the same reasons as the independent claims from which they directly or ultimately depend, as well as for their additional limitations.

Applicants acknowledge the references cited in the Office Action, but not substantively applied. However, Applicants submit that the pending claims are patentable thereover as well.

For all the above reasons, Applicants maintain that the claims of the subject application define patentable subject matter and earnestly request allowance of claims 1-55.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,



Wayne F. Reinke
Attorney for Applicants
Registration No.: 36,650

Dated: November 7, 2005.

HESLIN ROTHENBERG FARLEY & MESITI P.C.
5 Columbia Circle
Albany, New York 12203-5160
Telephone: (518) 452-5600
Facsimile: (518) 452-5579